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**Senate Bill 850, An Act Concerning the Department of Administrative Services,
Department of Transportation and Prequalification and Evaluation of
Contractors**

Labor and Public Employees Committee

February 10, 2011

CCIA Position: Opposed

Connecticut Construction Industries Association, Inc. (CCIA) represents various sectors of the commercial construction industry in the state. Formed over 40 years ago, CCIA is an organization of associations, where all segments of the commercial construction industry work together to advance and promote their shared interests. CCIA is comprised of about 350 members, including contractors, subcontractors, suppliers and affiliated organizations. CCIA members have a long history of providing quality work for the public benefit.

Section 1 of Senate Bill 850, An Act Concerning the Department of Administrative Services, Department of Transportation and Prequalification and Evaluation of Contractors, would require the Commissioner of Administrative Services to deny a prequalification certificate to any contractor or substantial subcontractor who, within the past five years, has received three or more unsatisfactory written evaluations. It eliminates the Commissioner's current discretionary authority and makes it mandatory for him to deny a prequalification certificate in these circumstances. Additionally, section 4 of the bill requires, for contracts to construct public buildings under the supervision and control of the Commissioner of Transportation, regulations specifying that bidders would not be deemed prequalified if, within the past seven years, they received three or more unsatisfactory written performance evaluations on public or private projects.

CCIA is **opposed** to Senate Bill 850 because the significant unintended negative consequences of the mandatory requirements far outweigh its intended benefits. Further, it would upset the balance of a very measured statute to a point that it could easily put good state contractors that have a long history of performing quality work for the public benefit out of business.

While CCIA strongly supports contractor evaluations as an integral part of an effective prequalification system, there are several issues that must be addressed before these extreme measures are considered, including:

- Standards should be developed for evaluations and they should provide safeguards from abuse.
- Contractors should be afforded a hearing to test the accuracy of an evaluation, or explain extenuating circumstances relating to an evaluation.
- Remedial measures and mitigating factors should be considered when analyzing evaluations.



Standards and safeguards are needed

Different government and private entities may use different criteria or standards as a basis for evaluations. Depending on the purpose, criteria, and standard used by the evaluator, an unsatisfactory evaluation by one entity may be perfectly acceptable, or even irrelevant to another. Without proper criteria and standards, the bill poses a risk to every state contractor, that it could be eliminated from state contracting based on an evaluation that has absolutely nothing to do with its ability to perform on a state project.

Simply basing a denial of prequalification on an arbitrary number of unsatisfactory evaluations can lead to unintended results. For example, contractor evaluations may be misused to gain leverage in construction disputes, or to gain an advantage over contractors performing on projects. The parties to construction projects often have differing opinions regarding the interpretation of contract provisions, drawings, and specifications that lead to disputes. A party in control of an evaluation could use it as leverage to gain an advantage over the contractor to be evaluated on a project.

Contractors should be afforded a hearing

If a contractor's prequalification is called into question based on evaluations, the contractor, at the very least, should have a sufficient opportunity to test and explain the evaluation. A denial of prequalification without a hearing could effectively eliminate qualified contractors from state contracting without a chance to tell the contractor's side of the story, which may call the evaluation into question, show it to be inaccurate, or show that it is irrelevant to the contractor's ability to perform public work.

Remedial measures and mitigating factors should be considered

Basing prequalification determinations on unsatisfactory evaluations extending back over long periods of time may inadvertently eliminate competent contractors. Contractors quickly address concerns on projects and with their business. Key personnel can change in construction companies from year to year. State contracting agencies should consider mitigating factors and remedial measures that come into play to address concerns before deeming a contractor not prequalified.

Prequalification is the lifeblood for most successful contractors. A denial is a death-knell. Proper protections should be in place before the state considers extreme measures to remove poor-performing contractors from public contracting.

Please contact John Butts, Executive Director of AGC of Connecticut, or Matthew Hallisey, Director of Government Relations and Legislative Counsel for CCIA, at 860-529-6855, if you have any questions or if you need additional information.